IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Paramjeet Singh. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 1115/2006
against the Order dated 20-8-2004 passed
by the Additional Chief Judicial Magistrate,
Sangaria, district Hanumangarh, in Criminal
Cases No. 480/2002, 565/2002 and 604/2003.

...

Date of Order: September 01, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. H.S. Sandhu, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioner seeks direction to run the substantive sentences concurrently awarded to him in Criminal Cases No. 480/2002, 565/2002 and 604/2003 vide judgment and order dated 20-8-2004 passed by the Additional Chief Judicial Magistrate, Sangaria, district Hanumangarh (for short, "the trial Court" hereianfter), whereby the trial Court, on the plea of guilt, convicted the accused-petitioner for the offence under Section 379 IPC in all the three cases and sentenced him

to undergo two years simple imprisonment and a fine of Rs.500/-, in default of payment of fine further to undergo one month's simple imprisonment.

A notice for final hearing is accepted by the learned Public Prosecutor. With the consent of the learned counsel for the parties, the criminal miscellaneous petition is being heard and decided at the admission stage.

The brief facts of the case, to the extent they are relevant and necessary for the decision of this petition, are that on Challans having been filed, the petitioner was put to trial for the offence under Section 379 IPC in three criminal cases. In all the three cases, the trial Court framed charge and recorded evidence of PW 1 Om Prakash and PW 2 Pusha Ram in Criminal Case No. 480/2002; PW 1 Om Prakash and PW 2 Ved Prakash in Criminal Case No. 565/2002; and PW 1 Mahaveer, PW 2 Puran Singh, PW 3 Teja Singh and PW 4 Sarvajeet Singh in Criminal Case No. 604/2003. On 18-8-2004, the accused-petitioner, in all the three cases, voluntarily filed an application stating therein that he pleads guilty. By the judgment and order impugned dated 20-8-2004, the learned trial Court convicted and sentenced the petitioner in Criminal Cases No. 480/2002, 565/2002 and 604/2003, as noticed above.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Carefully gone through the

impugned judgment and order passed in the aforesaid criminal cases.

It is contended by the learned counsel for the petitioner that the trial Court, by the judgment and order impugned dated 10-8-2004, while sentencing the petitioner, has not ordered for running the substantive sentences concurrently and, therefore, by the instant petition, the petitioner seeks a direction for running the substantive sentences awarded in all the three cases concurrently. Learned counsel has relied on a Full Bench decision of the Madhya Pradesh High Court in Shersingh Vs. State of M.P., 1989 Cri. L.J. 632; the decisions of this Court in Mohan Lal alias Hanuman Singh Vs. The State of Rajasthan, 1987 Cr.L.R. (Raj.) 241; and Karamveer Vs. State of Rajasthan etc. etc., 2006 (5) RDD 2441 (Raj.).

Section 427 of the Code reads as under:-

> "**427. Sentence on offender already sentenced for another offence.-** (1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:
>
> Provided that where a person who has been sentenced to imprisonment by an order under Section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

> (2)When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."

While considering the provisions of Sections 428 and 427 of the Code, the Hon'ble Supreme Court, in State of Maharashtra & Anr. Vs. Najakat Ali Mubarak Ali, (2001) 6 SCC 311, in para 26 of the reports, held that Section 428 of the Code is preceded by Section 427 which provides that when any person already undergoing sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such imprisonment shall commence at the expiration of the commencement to which he has been previously sentenced, unless the court directs that the subsequent sentence shall run concurrently with such previous sentence. (emphasis supplied). Section 427 of the Code thus authorises a court of law to direct the sentence awarded by it to run concurrently, obviously keeping in view the facts and circumstances pertaining to the case of the accused. His detention pending investigation, enquiry or trial in that case or some other cases being relevant consideration while directing the sentences to run consecutively or concurrently.

From a reading of Section 427 of the Code, it is clear that when sentence of imprisonment or imprisonment for

life is imposed upon a person already undergoing the imprisonment but not imprisonment for life, such sentence shall commence at the expiration of the imprisonment already imposed and being undergone unless the Court directs that the subsequent sentence sentence shall run concurrently with such previous sentence, subject, however, to the proviso given therein and the specific provision made in sub-section (2) of Section 427 of the Code with respect to a convict already undergoing life imprisonment.

From these provisions, it is clear that the Court may direct the subsequent sentence of imprisonment to run concurrently with the previous substantive sentence of imprisonment. Such a direction can be given by the Court after taking into consideration the facts of the case while passing the substantive sentence. However, in the instant case, neither the trial Court, nor the Appellate Court, at the time of deciding the appeal, passed such direction and, therefore, the question as to whether such a direction can be given while exercising the inherent powers by this Court under Section 482 of the Code.

In Mohan Lal alias Hanuman Singh Vs. The State of Rajasthan, 1987 Cr.L.R. (Raj.) 241, the petitioner therein was convicted and sentenced. The sentences of imprisonment were varying in terms in the case and no order for those sentences to run concurrently was passed in the judgment. This Court, while

exercising the powers under Section 482 of the Code, ordered that the four sentences awarded to the petitioner therein for the offence under Section 457 IPC on different dates by the same Magistrate shall run concurrently.

In Karamveer Singh Vs. State of Rajasthan etc. etc., 2006 (5) RDD 2441 (Raj.), this Court directed the substantive sentences for the offences under Section 395 IPC and Section 27, 3/25 of the Arms Act to run concurrently.

In Hardeva & ors. Vs. State of Rajasthan, 2004 (1) WLC (Raj.) 295, this Court held that in exercise of the power under Section 482 of the Code, the Court may direct subsequent sentence to run concurrently with the previous sentence.

In Mukhtiar Singh Vs. State, 1995 Cri.L.J. 2057, while considering the provisions of Sections 427 and 482 of the Code, it was held by the Jammu & Kashmir High Court that where a convict, out of ignorance or because of default of his counsel for any other reasons, may omit to ask for running of the sentences concurrently in the subsequent trial, the High Court possess the inherent power to pass appropriate directions in a fit case and while doing so, it would not be altering any judgment or sentence in the process. The judgment remains intact and so does the sentence because the High Court, in such a case, would be only dealing with the manner of running of the sentence and nothing more.

In Mulaim Singh Vs. State, 1974 Cri.L.J. 1397, a Full Bench of Allahabad High Court held that it would be competent for the High Court, in exercise of its inherent power, to direct that the sentence of imprisonment under a subsequent conviction shall run concurrently with a previous sentence even if the stage for exercise of discretion under Section 397 (1) of the Old Code (corresponding to Section 427 (1) of the New Code) is over in the circumstances where it would serve any of the three purposes mentioned in Section 561-A of the Old Code (corresponding to Section 482 of th New Code), i.e. to give effect to any order under the Code, or to prevent the abuse of the process of the Court, or otherwise to secure the ends of justice.

In Shersingh Vs. State of M.P., 1989 Cri. L.J. 632, a Full Bench of Madhya Pradesh High Court held that the inherent power of the High Court can be invoked under Section 482 of the Code even if the trial court or the Appellate or Revisional Court has not exercised its discretion under Section 427 (1) of the Code in directing running of previous and subsequent sentences concurrently. The inherent power of the High Court is not in any way fettered by the provisions of Section 427 (1) and it can be invoked at any stage even if there is no such order passed under Section 427 (1) by the trial Court or Appellate or Revisional Court and even though the conviction has become final.

Having regard to the facts and circumstances of the case and the fact that the petitioner has been convicted and sentenced for the offence under Section 379 IPC in three different criminal cases and on the plea of alibi, was convicted and sentenced by the same judgment by the trial Court, in my view, to give effect to the order, the ends of justice would be met in directing the substantive sentences for the offence under Section 379 IPC in the aforesaid three criminal cases to run concurrently.

Consequently, the miscellaneous petition under Section 482 of the Code is allowed and it is directed that the substantive sentence imposed upon the petitioner for the offence under Section 379 IPC in Criminal Cases No.480/2002, 565/2002 and 604/2003 by the learned trial Court shall run concurrently. However, sentence in default shall run consecutively, i.e. one after the another.

(H.R. PANWAR), J.

mcs